



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jillian Brett, *et al.*,
Human Services Specialist 4
(PC1644U), Monmouth County

CSC Docket Nos. 2018-3551 and
2018-3743

Request for Reconsideration and
Examination Appeal

ISSUED: JULY 23, 2018

(ABR)

The Civil Service Commission (Commission), on its own motion, grants reconsideration of its decision in *In the Matter of Jillian Brett, et al.*, rendered on March 27, 2018.¹ Additionally, Lauren Townsend appeals her score on the examination for Human Services Specialist 4 (PC1644U), Monmouth County. It is noted that Townsend passed the examination with a final average of 76.190 and ranks 23 on the resultant eligible list. Since these appeals address similar issues, they have been consolidated herein.

By way of background, the subject examination was announced with a closing date of August 22, 2016. A total of 43 applicants applied for the subject examination. All 43 applicants were admitted to the examination, which was administered on February 14, 2017 utilizing the Supervisory Test Battery (STB). The subject examination resulted in an eligible list containing 38 names that promulgated on March 9, 2017 (Original List) and expires on March 8, 2019. A certification (PL170340) containing the names of six eligibles was issued on March 13, 2017. Thereafter, several candidates advised the former Division of Administrative Support and Logistics (Administrative Support and Logistics)² that they had taken the test without knowing that they had the option to reuse their prior STB score. Consequently, the Division of Agency Services (Agency Services)

¹ It is noted that in the Commission's March 27, 2018 decision incorrectly indicated that the PC1644U eligible list was for the title of County Services Specialist. Rather, the correct title for the PC1644U eligible list is Human Services Specialist 4.

² The Division of Administrative Support and Logistics is now the Division of Administration.

revised the rankings on the subject eligible list (April 2017 List) by applying the prior STB score for candidates who had taken the February 14, 2017 examination but who had scored higher on a prior STB. Additionally, Agency Services cancelled the March 13, 2017 certification (PL170340). After the issuance of the April 2017 List, certifications were issued on April 26, 2017 (PL170547) and June 8, 2017 (PL170697). The disposition of the April 26, 2017 certification resulted in the appointments of Leslie Madden and Eliza Rodriguez-Mahmoud, effective June 16, 2017, while the disposition of the June 8, 2017 certification resulted in the appointments of Shonna Fatta, Amanda Widdis and Townsend, effective August 16, 2017.

Jillian Brett, Marc Goldberg, Charles Laskay, Arti Sinha, Kimberly (Johnson) White and Fatta appealed the change in rankings and the issuance of the April 2017 List.³ In response to those appeals, Agency Services and Administrative Support and Logistics reviewed all candidates' scores and rankings on the subject examination and advised the Division of Appeals and Regulatory Affairs (DARA) that it had made an error with K.T.'s score and ranking on both the Original List and the April 2017 List. It noted that K.T. was ranked as 31 on the Original List and 17 on the April 2017 List, based upon a raw score of 49.2 and a final average of 74.240 on the February 14, 2017 STB examination. However, Administrative Support and Logistics indicated that she should have been ranked as "4A" (between the scores received by the fourth and fifth ranked eligibles on the April 2017 List), based upon a raw score of 59.2 and a final average of 81.040.

In its March 27, 2018 decision, the Commission ordered that the subject eligible list be reissued, applying the February 14, 2017 STB examination scores for all candidates. Based upon the change to K.T.'s score and her resulting re-ranking as 4A, the appointing authority was ordered to consider K.T. and Rodriguez-Mahmoud for appointment from the April 26, 2017 certification, as corrected. The Commission also ordered that the June 8, 2017 certification be corrected and returned to the appointing authority, to allow it to consider K.T. or Rodriguez-Mahmoud (whomever of the two was not appointed from the April 26, 2017 certification), Fatta and any lower-ranked eligible reachable for appointment based upon the rankings from the Original List.

While re-ranking the candidates on the subject eligible list in accordance with the Commission's March 27, 2018 decision in this matter, Administrative Support and Logistics discovered it had mistakenly reported to the Commission that K.T.'s score was incorrect. Accordingly, in June 2018, it advised DARA and Agency Services that K.T.'s score was originally correct and she should be ranked 32 on the

³ Neither Townsend nor Widdis filed appeals with the Commission.

subject eligible list.⁴ Administrative Support and Logistics explained that a staff member preparing a list of raw scores in November 2017 mistakenly wrote the wrong score for K.T. It noted that her raw score was actually 49.2 and not the 59.2 it had indicated in November 2017. As a result, it concluded that her final average was 74.240. In support, it submits a copy of the email sent to K.T. notifying her of her score. Accordingly, the instant matter was referred to the Commission for reconsideration of its March 27, 2018 decision in light of the foregoing.

As a result, the candidates and the appointing authority were advised of the issue with K.T.'s score and were given the opportunity to submit any relevant information for the Commission's review of the instant matter. Only White and Townsend submitted arguments for the Commission's review.

White argues that the subject eligible list should be cancelled and all candidates should be given the opportunity to retake the STB because Administrative Support and Logistics' decisions to allow candidates to reuse prior STB scores after taking the STB on February 14, 2017 and issue the April 2017 List without a formal appeal, together with its repeated errors with respect to K.T.'s score, have compromised the integrity of the list. White maintains that because Administrative Support and Logistics miscalculated K.T.'s score multiple times, she has no way of knowing whether her score was calculated correctly either. White also expresses concern that the subject eligible list might expire before the Commission could issue a determination on the matter, given the more than 10 months that elapsed between her original May 2017 appeal and the Commission's March 27, 2018 decision.

Townsend requests that she be permitted to utilize the higher score she received with the April 2017 List based upon her score from a prior administration of the STB and that she be allowed to retain the permanent appointment to the subject title she received, effective August 16, 2017, from the June 8, 2017 certification. Her request is based, in part, on issues with the administration of the subject examination. Specifically, she contends that monitors gave examinees incorrect information about the passing score and which questions they were required to answer. Townsend also maintains that there were issues with her testing facility. Namely, she states that it was difficult to concentrate on the examination because of noise from an adjacent room where a class was being held and the hot temperature of the examination room. Townsend submits that she "verbally reported" these issues to this agency on March 1, 2017 via telephone.

⁴ K.T. would appear in the same position as she did on the Original List. However, her rank will be 32, rather than 31, because White, who was ranked as "13A" on the Original List because of the late addition of her name, will appear ranked as 14 on the reissued list. This will also result in the eligibles ranked 14 through 37 on the Original List moving down a rank on the reissued list.

Townsend also cites notification issues in support of her request to utilize her prior STB score. Specifically, she maintains that, unlike many of the other candidates for the subject examination, she was never notified prior to retaking the STB on February 14, 2017 that she could have applied her prior STB score for the subject examination instead of retaking the STB. In support, she submits various documents, including notifications she received from this agency regarding the subject examination, as "evidence that [she] had no prior knowledge about the option to reuse a prior STB score." She states that she did not believe it was necessary to review the Commission's website for information about the STB because she had taken many Civil Service examinations over the years, including the STB and she believed that she had to retake the examination because she was charged a fee to apply for it. She submits that she contacted Administrative Support and Logistics about the notification issue after she received a March 1, 2017 Notification of Eligibility. She states that Administrative Support and Logistics advised her that she should have received a notice about the ability to reuse her previous STB score at least two months prior to the February 14, 2017 examination date. She maintains that, as a result, Administrative Support and Logistics allowed her to utilize her score from the previous time she took the STB on February 19, 2013, thereby raising her final average and increasing her ranking to six on the Original List.

Furthermore, Townsend argues that this agency's decision to adjust the rankings of other candidates and issue the April 2017 List was erroneous. In this regard, she maintains that the issuance of the April 2017 List was precipitated by complaints from other candidates who sought to use higher scores from prior administrations of the STB after learning of her increased ranking. She submits that these other candidates should have not been permitted to utilize higher scores because they did not comply with the requirement in *N.J.A.C. 4A:4-6.4(b)* that they appeal their scores within 20 days of the March 1, 2017 Notification of Eligibility. In support, Townsend submits, in relevant part, copies of Notifications of Eligibility dated March 1, 2017 and April 26, 2017, Notifications of Certification dated March 20, 2017 and June 15, 2017 and documentation she received from the appointing authority regarding her permanent appointment to the subject title, effective August 16, 2017.

Finally, Townsend argues that the Commission's March 27, 2018 decision was unfair because it prevents her from remaining in the title she has held since being provisionally appointed in April 2017, particularly since she had attained "permanent status," effective August 16, 2017.

CONCLUSION

The Commission, on its own motion, has granted reconsideration of its March 27, 2018 decision concerning the Human Services Specialist 4 (PC1644U) eligible

list. *N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. The rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and reasons that such evidence was not presented at the original proceeding. *N.J.A.C.* 4A:4-6.3(c) provides that unless ordered by the Commission or the Chairperson, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. *N.J.A.C.* 4A:4-1.4 provides:

(a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranked eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.

(b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.

(c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment.

(d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

N.J.A.C. 4A:4-3.8 provides that the Commission may correct an error at any time and that corrections of errors may result in a change in ranking. See *N.J.A.C.* 4A:4-3.8(a) and (c). See also *In the Matter of Senior Training Technician (PC2241C)*, Passaic County Board of Social Services (MSB, decided October 6, 2004), *aff'd*, *In the Matter of Senior Training Technician (PC2241C)*, Passaic County Board of Social Services, Docket No. A-1344-04T1 (App. Div. 2005). No vested or other rights are accorded by such an administrative error. See *Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998).

N.J.A.C. 4A:4-3.3(c) provides that the Chairperson or designee may, in cases of fraud, illegality, test invalidity, error by the Civil Service Commission staff, or other good cause, cancel an eligible list prior to its expiration date by issuing an order, which shall provide a means for the notification of eligibles. The Chairperson or designee shall also notify affected appointing authorities.

The Commission has found it necessary to grant reconsideration of this matter due to the discovered error with K.T.'s score. In this regard, the

Commission's prior decision ordered that K.T.'s final average be "corrected" to 81.040 based upon a raw score of 59.2. However, the record reveals that K.T.'s score was never incorrect. Rather, when agency staff reviewed the STB scores of all candidates on the subject eligible list in November 2017, a staff member preparing a list of raw scores mistakenly wrote K.T.'s raw score as 59.2 instead of 49.2. Therefore, her final average on the Original List, of 74.240, was correct. As K.T.'s ranking is 32, she would not have been reachable for appointment from the April 26, 2017 or June 8, 2017 certifications. Consequently, the Commission's decision in ordering that those certifications be returned to allow her to be considered on those certifications was also in error. Therefore, the Commission vacates its March 27, 2018 decision with regard to the reissuance of the affected certifications. However, the Commission reaffirms its decision that the eligibles who took the examination on February 14, 2017 were required to utilize that score and not an earlier score. Moreover, the Commission finds that its decision to order the reissuance of the subject eligible list using February 14, 2017 STB scores was correct.

The Commission emphasizes that the administrative issues raised by Townsend and White do not present good cause to cancel the subject eligible list, as advocated by White. Initially, White does not offer any substantive proof that her score or the score of any candidate other than K.T. was incorrect. Rather, the record evidences that Administrative Support and Logistics' misidentification of K.T.'s score in November 2017 was an isolated clerical error. Although Townsend argues that there were issues with the administration of the subject examination, that portion of her appeal is considered untimely, as *N.J.A.C. 4A:4-6.4(c)* states that an examination candidate wishing to challenge the manner in which the examination was administered must file an appeal in writing at the examination site on the day of the examination. Townsend states that she raised her complaints about the administration of the February 14, 2017 STB via phone on March 1, 2017. Since her appeal pertaining to the test administration issues were not submitted on the night of test administration, her appeal of her score on the basis of these issues is denied. Thus, since there is not a cognizable claim of serious issues with the content or administration of the STB examination on February 14, 2017, there does not appear to be a basis to order a new examination. Further, cancelling the subject eligible list and requiring all candidates to retake the STB would only further delay the appointing authority's ability to effectuate permanent appointments to the subject title.

As to Townsend's arguments about her proper rank, the Commission emphasizes that it is aware that Administrative Support and Logistics and Agency Services had originally changed her score and ranking, as well as those of other eligibles, based upon complaints that they had taken the STB without knowing that they had the option to reuse their prior STB score. Further, the Commission stresses that it gave careful consideration to the impact of its decision on all eligibles, including her and others that had received a permanent appointment

following the issuance of the April 2017 list. However, Townsend's and other select candidates' apparent lack of knowledge about the option to reuse a prior STB score is unavailing, as all candidates had sufficient notice of the option. Specifically, the examination announcement refers to the Commission's website for more information about the test. The specific page candidates are directed to review contains the following:

**SPECIAL NOTICE TO CANDIDATES SCHEDULED TO TAKE
THE SUPERVISORY TEST BATTERY (STB) EXAM**

Once you establish a score on the STB exam, your score is valid for up to five years. Your score may be applied to future announcements tested under this program for up to five years, as long as the same version of the STB test is in use. Test score duration does not affect the duration of eligible lists issued. These lists will remain in effect until their established expiration date.

You may retake the STB after one year. If you choose to retake the STB after one year, your score is based solely on that latest test administration.

Moreover, the STB Guide, which is also available through the website, indicates:

A candidate's test score is typically banked for five years for possible future use. That is, should a candidate apply to a future STB announcement within this five year period, his STB score will be applied to that new announcement. Candidates, however, may retake the STB after one year in response to a future announcement for which they are eligible.

Furthermore, the Commission has previously found it inappropriate to allow similarly-situated candidates to reuse a prior score after retaking the STB or the Management Test Battery when the underlying examination announcement advised all applicants of the test mode and directed them to the agency website for more information. *See e.g., In the Matter of Marcy Blatt* (MSB, decided July 27, 2005); *In the Matter of Eric Pierre* (MSB, July 19, 2006). Therefore, the corrected PC1644U eligible list and resultant certifications shall continue to utilize the rankings based upon STB scores for those candidates who took the examination on February 14, 2017.

Finally, with regard to White's and Townsend's concerns about the timing of the Commission's action in this matter, the Commission emphasizes that although it took several months to render its March 27, 2018 decision, due to the complexity of the issues involved, its reconsideration of its initial determination has proceeded

swiftly since the time the Commission was made aware of Administrative Support and Logistics' error. Lastly, it cannot be said that any delays that have occurred in effectuating permanent appointments from the subject eligible list have impacted the rights of the eligibles, as individuals whose names merely appear on a list do not have a vested right to appointment. *See In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

With regard to the action to be taken concerning the April 26, 2017 certification, it is noted that the Commission's March 27, 2018 decision ordered that the April 26, 2017 certification be returned to the appointing authority due to the change to K.T.'s score. However, as noted above, K.T.'s name would not have appeared on the April 26, 2017 certification with her correct score. Therefore, it is unnecessary to return the April 26, 2017 certification to the appointing authority. Accordingly, Agency Services is directed to record the disposition of the April 26, 2017 (PL170547) certification, using the change in rankings for eligibles who took the STB on February 14, 2017,⁵ as follows:

Position	Rank	Name	Disposition
1	1	S.A.	I7: Retain – Interested in future certifications only
2	2	A.O.	I7
3	3	C.Y.	I2: Retain – Interested others appointed (reachable for appointment)
4	4	Madden	A4: Appointed, effective June 16, 2017
5	5	Rodriguez-Mahmoud	A4: Appointed, effective June 16, 2017
6	6	Fatta	I2

With regard to the June 8, 2017 certification, it is to be corrected to reflect the change in rankings for eligibles who took the STB on February 14, 2017 and allow the appointing authority to reconsider the appointments made from it, as set forth below. The first, second and third positions shall remain unchanged and Fatta shall now appear in the fourth position. Since there is not a higher-ranked individual that the appointing authority failed to consider ahead of Fatta on the

⁵ It is noted that F.J. will not appear on the corrected April 26, 2017 certification, as her rank based upon her February 14, 2017 STB score is eight. Rodriguez-Mahmoud will appear in the fifth position and Fatta will appear in the sixth position on the corrected April 26, 2017 certification based upon their respective February 14, 2017 STB scores.

corrected June 8, 2017 certification, it is inappropriate for the appointing authority to reconsider her appointment, effective August 16, 2017. The June 8, 2017 certification, as corrected, should be returned to the appointing authority, to allow it to consider any lower-ranked eligible below Fatta reachable for appointment based upon the rankings from the Original List. Specifically, Agency Services shall return the June 8, 2017 certification to the appointing authority, appearing as follows, for disposition of the fifth through 15th positions:

Position	Rank	Name	Disposition
1	1	S.A.	I7: Retain – Interested in future certifications only
2	2	A.O.	I7
3	3	C.Y.	I7
4	6	Fatta	A4: Appointed, effective August 16, 2017
5	7	Sinha	
6	8	F.J.	
7	9	Laskay	
8	10	Widdis	
9	11	K.W.	
10	12	Goldberg	
11	13	A.A.	
12	14	White	
13	15	R.O.	
14	16	S.R.	
15	17	L.I.M.F. ⁶	

Finally, it is noted that Townsend, who was ranked 22 on the Original List, would not have been reachable on this certification based on the original rankings. In so doing, those appointees shall receive an August 16, 2017 appointment date (the effective date for the appointment of Fatta, Widdis and Townsend from the June 8, 2017 certification) for seniority and record purposes upon successful completion of a current working test period.⁷ If more than two appointments are made in addition to Fatta, only the two highest ranked appointees after Fatta shall receive the retroactive appointment date.

⁶ Two eligibles on the subject eligible list, one female and one male, have the initials L.I.M., L.I.M.F. is used to denote the female eligible bearing the initials L.I.M.

⁷ Should Widdis be appointed, she would not be required to undergo a new working test period, as she has already completed one.

ORDER

Therefore, the Commission grants reconsideration on its own motion and orders that its March 27, 2018 decision be vacated.

Additionally, it orders that the Human Services Specialist 4 (PC1644U) eligible list be reissued applying the February 14, 2017 STB examination scores for all candidates, including a raw score of 49.2 for K.T. Further, the Division of Agency Services shall record the disposition of the April 26, 2017 certification (PL170547) as set forth above. Finally, the June 8, 2017 certification (PL170697) shall be returned to the appointing authority for disposition of the fifth through 15th positions, as set forth above.

Townsend's appeal of her score on the Human Services Specialist 4 (PC1644U) examination is denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF JULY, 2018



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Chairperson
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Attachment

c: Jillian Brett
Marc Goldberg
Charles Laskay
Arti Sinha
Kimberly White
K.T.

Leslie Madden
Eliza Rodriguez-Mahmoud
Lauren Townsend (2018-3743)
Shona Fatta
Amanda Widdis
All other eligibles on the PC1644U eligible list
Frank J. Tragno, Jr.
Kelly Glenn
Joseph DeNardo
Terri Keiper
Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jillian Brett, *et al.*,
County Services Specialist
(PC1644U), Monmouth County

Examination Appeal

CSC Docket No. 2017-3650, *et al.*

ISSUED: APRIL 2, 2018

(ABR)

Jillian Brett, Marc Goldberg, Charles Laskay, Arti Sinha and Kimberly (Johnson) White appeal the scoring of the promotional examination for County Services Specialist (PC1644U), Monmouth County. Since these appeals address similar issues, they have been consolidated herein.

By way of background, the subject examination was announced with a closing date of August 22, 2016. A total of 43 applicants applied for the subject examination. All 43 applicants were admitted to the examination, which was administered on February 14, 2017 utilizing the Supervisory Test Battery (STB). Applicants were notified of the scheduled examination by mail on January 19, 2017. Candidates who had the option of reusing a previous score, including Brett and Laskay, were contacted via email on February 10, 2017 notifying them that they could use their old score or take the current examination. Two candidates utilized a prior STB score in lieu of retaking the STB on the examination date. Candidates were required to achieve a raw score of 446 to pass the examination. Brett earned a final raw score of 538, Goldberg earned a final raw score of 564, Laskay earned a final raw score of 546, Sinha earned a final raw score of 552 and White earned a final raw score of 556. The subject examination resulted in an eligible list containing 38 names that promulgated on March 9, 2017 (Original List) and expires on March 8, 2019. A certification (PL170340) containing the names of six eligibles was issued on March 13, 2017.

Thereafter, several candidates advised the Division of Administrative Support and Logistics (Administrative Support and Logistics) that they had taken

the test without knowing that they had the option to reuse their prior STB score. Consequently, the Division of Agency Services (Agency Services) revised the rankings on the subject eligible list (April 2017 List) by applying the prior STB score for candidates who had taken the February 14, 2017 examination but who had scored higher on a prior STB. Additionally, Agency Services cancelled the March 13, 2017 certification (PL170340).

Sinha, Laskay, Goldberg, White and Brett were ranked seventh, ninth, 12th, 13A,¹ and 21st, respectively, on the Original List and 14th, 12th, 15th, 18th and 25th, respectively, on the April 2017 List. However, on the April 2017 list, Sinha and another eligible, K.T., were erroneously ranked based upon lower raw scores they received from prior STB examinations. Sinha's rank of 14th on the April 2017 List was based upon a final average of 78.360. However, Sinha's correct final average on the subject examination was 78.640, which would have ranked her 12th on the April 2017 List. K.T. was ranked 31st on the Original List based upon an incorrect final average of 74.240 and ranked 17th on the April 2017 List based upon a final average of 78.050.²

After the issuance of the April 2017 List, certifications were issued on April 26, 2017 (PL170547) and June 8, 2017 (PL170697). The disposition of the April 26, 2017 certification resulted in the appointments of Leslie Madden and Eliza Rodriguez-Mahmoud, effective June 16, 2017, while the disposition of the June 8, 2017 certification resulted in the appointments of Shonna Fatta, Amanda Widdis and Lauren Townsend, effective August 16, 2017.³ It is noted that a certification issued on November 22, 2017 (PL171402) from the April 2017 list has not yet been disposed of.

In their respective appeals, Brett, Goldberg, Laskay, Sinha and White argue that their rankings were unjustly lowered by Agency Services' reissuance of the subject eligible list. Sinha also argues that her final average on the STB was erroneously lowered when the April 2017 List took effect and she contends that she may have been reachable for appointment on one or more of the above-noted certifications if the error had not occurred.

Brett, Goldberg, Laskay and White argue, in part, that it was unfair for Agency Services to allow eligibles with a prior STB score to use the best of their scores because they had at least some form of notice about the option to use their earlier STB score prior to taking the subject examination. Brett maintains that at

¹ Johnson was ranked as "13A" because her name was not added to the Original List until March 9, 2017.

² K.T.'s correct final average from the February 14, 2017 examination was 81.040, which would have ranked her fifth on both lists.

³ Madden, Rodriguez-Mahmoud, Fatta, Widdis and Townsend were ranked forth, fifth, sixth, 10th and 22nd, respectively, on the Original List and fourth, sixth, eighth, ninth and 11th, respectively, on the April 2017 List.

least some of the eligibles who had a prior STB score and retook the STB examination on February 14, 2017 knew that they had the ability to keep their original score. White proffers that the January 19, 2017 examination notice referred all candidates to the Civil Service Commission's (Commission) website for additional information. Moreover, Goldberg, Laskay and White contend that all candidates had notice of the rules regarding the use of a prior STB score for up to five years through the Commission's website. Laskay argues that, per the STB guidelines published on the Commission's website, candidates should not have been allowed to use prior STB scores, as the STB administered on February 14, 2017 was not the "exact same version" as previous STB tests. White also submits that all candidates were notified of that option via email in the days prior to the exam and were reminded about the option again at the testing location prior to the examination. Finally, Laskay also argues that the reissuance of the list was improper, as it was done without a decision by the Commission.

As to requested remedies, Brett and White argue that all candidates should be required to take the examination again and re-ranked on the eligible list based upon that new score. Alternatively, they submit that candidates who had not previously taken the STB should be allowed to take it again and receive a new ranking that utilizes the higher of the two STB scores. Finally, Goldberg, Laskay and White argue that the rankings from the Original List should be reinstated.

Administrative Support and Logistics states that candidates were notified about the scheduled examination by mail on January 19, 2017. It indicates that its policy at the time of the subject examination was to send candidates an email advising them about the option to reuse a previous STB score about a week after notifying them that they had been admitted to the examination. However, with the subject examination, candidates with that option were not advised of it until Administrative Support and Logistics emailed candidates on February 10, 2017, four days before the date of the examination. Administrative Support and Logistics states that the aforementioned email was not sent using a tracker or a read receipt to verify that candidates received the message. It submits that, after the examination, multiple candidates contacted it, claiming that they had not received the February 10, 2017 email regarding the option to apply their prior STB score to the subject examination instead of retaking the examination. Administrative Support and Logistics indicates that under those circumstances and because they had utilized newer procedures, it was possible that some of the candidates may not have received or read the notification by the examination date. Consequently, Administrative Support and Logistics and Agency Services decided to utilize the higher score of either examination taken for all eligibles with a prior STB score when ranking the eligibles on the April 2017 List.

Following Sinha's instant appeal, Agency Services reviewed the rankings of candidates on the April 2017 List and corrected the scores and rankings for her and

K.T. As a result, K.T. was ranked as "4A" since her score on the examination was between the scores received by the fourth and fifth ranked eligibles on the April 2017 List and Sinha was ranked as "11A" since her score on the examination was between the scores received by the 11th and 12th ranked eligibles on that list.

CONCLUSION

N.J.A.C. 4A:4-6.3(a)1 provides that appeals may be made on examination items, scoring and administration. *N.J.A.C.* 4A:4-6.3(c) provides that unless ordered by the Commission or the Chairperson, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. *N.J.A.C.* 4A:4-1.4 provides:

(a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranked eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.

(b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.

(c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment.

(d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

N.J.A.C. 4A:4-3.8 provides that the Commission may correct an error at any time and that corrections of errors may result in a change in ranking. See *N.J.A.C.* 4A:4-3.8(a) and (c). See also *In the Matter of Senior Training Technician (PC2241C)*, Passaic County Board of Social Services (MSB, decided October 6, 2004), *aff'd*, *In the Matter of Senior Training Technician (PC2241C)*, Passaic County Board of Social Services, Docket No. A-1344-04T1 (App. Div. 2005). No vested or other rights are accorded by such an administrative error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super 538 (App. Div. 1998).

At the outset, it is clear that the proper final averages for K.T. and Sinha are not in dispute, as Agency Services has corrected their scores for the subject examination. Additionally, it is noted that K.T.'s ranking of 4A reflects her correct rank on both the Original List and the April 2017 List. However, the proper

rankings for Sinha and the other appellants in this matter necessarily depend on whether Agency Services' decision to issue the revised rankings contained in the April 2017 List is sustained.

A review of the record indicates that the subject promotional announcement advised candidates that the STB may be used as the evaluation method and the announcement referred applicants to the Commission's website for more information on the test. The Commission's website specifically provides:

**SPECIAL NOTICE TO CANDIDATES SCHEDULED TO TAKE
THE SUPERVISORY TEST BATTERY (STB) EXAM**

Once you establish a score on the STB exam, your score is valid for up to five years. Your score may be applied to future announcements tested under this program for up to five years, as long as the same version of the STB test is in use. Test score duration does not affect the duration of eligible lists issued. These lists will remain in effect until their established expiration date.

You may retake the STB after one year. If you choose to retake the STB after one year, your score is based solely on that latest test administration.

Thus, ample notice was provided to all candidates regarding the use of the score achieved on the STB. It is a candidate's responsibility to ensure that he or she reviews testing information on the Commission's website that is specifically referenced in an examination announcement. Indeed, the Merit System Board, the predecessor to the Commission, denied appellants' requests to utilize previous scores after retaking the STB or the Management Test Battery, based upon findings that they had sufficient notice of such an option through examination announcements that advised all applicants of the test mode and directed them to the agency website for more information. *See e.g., In the Matter of Marcy Blatt* (MSB, decided July 27, 2005); *In the Matter of Eric Pierre* (MSB, July 19, 2006). Candidates for the subject examination were similarly situated, as the January 19, 2017 examination notice referred them to the Commission's website for additional information and the website apprised candidates about the option to reuse a prior STB score. Thus, with the subject examination, even if one or more eligibles was unaware of the option to reuse a previous STB score prior to taking the STB on February 14, 2017, it would be inconsistent with the decisions noted above to allow that lack of actual knowledge to serve as a basis for utilizing a higher score from a prior STB examination. Moreover, it would also provide them with an unfair advantage over two eligibles who reused prior STB scores in lieu of sitting for the February 14, 2017 STB examination and, consequently, did not receive the same opportunity to utilize the highest score of either a prior or the current STB

examination. Therefore, the subject eligible list must be reissued, applying the February 14, 2017 STB examination scores for all candidates.

As noted above, *N.J.A.C.* 4A:4-1.4(a) provides that a conditional regular appointment may be made when there is a dispute or an appeal concerning a higher ranking eligible which may affect the final appointment. Therefore, when the appellants filed the instant appeal, the appointments made by the appointing authority from the April 26, 2017 and June 8, 2017 certifications became conditional.

With regard to the April 26, 2017 (PL170547) certification, the appointing authority appointed Madden and Rodriguez-Mahmoud, who were ranked fourth and fifth, effective June 16, 2017. Upon the correction of K.T.'s score, her rank would be 4A on the April 26, 2017 certification. As such, it would be inappropriate to allow the appointing authority to reconsider the appointment of Madden, who scored higher than K.T. and whose rank was listed as fourth on the April 4, 2017 certification. Therefore, the April 26, 2017 certification, as corrected, should be returned to the appointing authority to allow it to consider K.T. and Rodriguez-Mahmoud for appointment. It is noted that the only interest which results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). However, if the appointing authority appoints K.T. from the subject certification, she shall receive a June 16, 2017 appointment date for seniority and record purposes upon successful completion of a current working test period.

With regard to the June 8, 2017 certification (PL170697), the appointing authority appointed Fatta, Widdis, and Townsend. The June 8, 2017 certification, as corrected, should be returned to the appointing authority, to allow it to consider K.T. or Rodriguez-Mahmoud, Fatta and any lower-ranked eligible reachable for appointment based upon the rankings from the Original List. The first, second and third positions on the June 8, 2017 certification shall remain unchanged. K.T. or Rodriguez-Mahmoud shall appear in the fourth position, as determined by the disposition of the corrected April 26, 2017 certification. The respective eligibles listed in the fifth through 15th positions shall be: Fatta, Sinha, F.J., Laskay, Widdis, K.W., Goldberg, A.A., White, R.O. and S.R. It is noted that Widdis and Townsend, who were ranked 10th and 22nd on the Original List, would not have been reachable on a certification based on the original rankings.¹ In so doing, those

¹ When the June 8, 2017 certification (PL170697) was originally issued to the appointing authority, the names of the eligibles were listed therein in the following order: S.A., A.O., C.Y., F.J., L.I.Mo., Townsend, Fatta, S.P., Widdis, Sinha, Laskay, K.W., Goldberg, and A.A. As noted above, the appointing authority returned the certification indicating that Fatta, Widdis and Townsend were appointed, effective August 16, 2017; F.J. and Laskay were bypassed; S.A., A.O., C.Y. and S.P. should be retained as interested in future certifications only; and that the remaining eligibles should be retained as interested. Based upon the number of currently interested eligibles appearing ahead

appointees shall receive an August 16, 2017 appointment date (the effective date for the appointment of Fatta, Widdis and Townsend from the June 8, 2017 certification) for seniority and record purposes upon successful completion of a current working test period.⁵ If more than three appointments are to be made, only the three highest ranked appointees shall receive the retroactive appointment date.

Finally, the November 22, 2017 certification shall be reissued based on the recalculation of candidates' scores and the disposition of the corrected April 26, 2017 and June 8, 2017 certifications.

ORDER

Therefore, it is ordered that these appeals be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF MARCH, 2018

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

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of Widdis and Townsend on the corrected June 8, 2017 certification, the "Rule of Three" would prevent the appointing authority from appointing Widdis or Townsend to the subject title with an effective date of August 16, 2017.

⁵ Should Fatta be appointed, she would not be required to undergo a new working test period, as she has already completed one.

c: Jillian Brett (2017-3650)
Marc Goldberg (2017-3634)
Charles Laskay (2017-3498)
Arti Sinha (2017-3493)
Kimberly White (2017-3553)
K.T.
Leslie Madden
Eliza Rodriguez-Mahmoud
Lauren Townsend
Shona Fatta
Amanda Widdis
All other eligibles on the PC1644U eligible list
Frank J. Tragno, Jr.
Kelly Glenn
Joe DeNardo
Records Center